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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RASHUL R. VAID

Appeal 2008-4358
Application 09/409,242
Technology Center 3600

| Decided: November 19, 2008

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Rashul R. Vaid (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1-16 and 76-78. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.¹

THE INVENTION

The invention relates to the sale of pre-paid airline tickets. A pre-paid airline ticket is a record of an advance-purchase of an airline ticket for a fixed price that may then be used by a customer to book a flight. According to the invention, the pre-paid airline ticket includes an identifier, which uniquely identifies the pre-paid airline ticket. The pre-paid airline ticket has plurality of geographic flight parameters and a plurality of non-geographic flight parameters associated with it that restricts the flight the customer can book. At least one of the geographic flight parameters is an unspecified geographic flight parameter. (Specification 2:18-22.)

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A pre-paid airline ticketing system comprising:
 - a processor; and
 - a storage device in communication with said processor and configured to store a record representing a pre-paid, fixed-price option purchased by a customer, the record including:
 - (i) a plurality of geographic flight parameters and a plurality of non-geographic flight parameters, at least one of the geographic flight parameters being unspecified and at least one of

¹ Our decision will make reference to the Appellant's Appeal Brief ("App. Br.", filed Jun. 4, 2008) and Reply Brief ("Reply Br.", filed Nov. 21, 2007), and the Examiner's Answer ("Answer," mailed Sep. 21, 2007).

the non-geographic flight parameters being participating airlines available for selection by the customer for booking a flight; and

(ii) an identifier associated with and uniquely identifying the record for the customer to use to exercise the pre-paid, fixed price option; and said processor configured to:

verify an identifier submitted by a customer to exercise the pre-paid, fixed-price option;

retrieve the record including the identifier submitted by the customer;

directly communicate and present information to the customer, the information representative of flights available to be selected by the customer based on the geographic and non-geographic flight parameters stored in the record;

directly receive selection information of one of the flights from the customer; and

book the flight selected by the customer from among the presented flights by exercising the pre-paid, fixed-price option.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Walker	US 5,897,620	Apr. 27, 1999
Oneda	US 5,953,705	Sep. 14, 1999

Hawaiian Air to Offer Tickets Through ATMs, Wall St. J., Jan. 6, 1998, at B6, available at ProQuest. (Herein after "Hawaiian Air").

The following rejections are before us for review:

1. Claims 1-11, 14-16, and 76-78 are rejected under 35 U.S.C. §103(a) as being unpatentable over Walker in view of Hawaiian Air.

2. Claims 12-13 are rejected under 35 U.S.C. §103(a) as being unpatentable over Walker in view of Oneda.

ISSUES

The issue before us is whether the Appellant has shown that the Examiner erred in rejecting claims 1-16 and 76-78 under 35 U.S.C. §103 as being unpatentable over Walker in view of Hawaiian Air. Specifically, did the Examiner make a *prima facie* showing that the combination of Walker and Hawaiian Air renders obvious a processor configured to “directly communicate and present information to a customer, the information representative of flights available to be selected by the customer based on the geographic and non-geographic flight parameters stored in the record;” wherein, the record includes “a plurality of geographic flight parameters, at least one of the geographic flight parameters being unspecified.”

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

Claim construction

1. Claim 1 recites a record that includes “a plurality of geographic flight parameters and a plurality of non-geographic flight parameters, at least one of the geographic flight parameters being unspecified and at least one of the non-geographic flight

- parameters being participating airlines available for selection by the customer for booking a flight.”
2. Claim 1 recites a processor configured to “directly communicate and present information to the customer, the information representative of flights available to be selected by the customer based on the geographic and non-geographic flight parameters stored in the record.”
- The scope and content of the prior art*
3. Walker relates to the booking of airline flights. (Col. 1, ll. 5-6.)
 4. An itinerary includes the origin and destination locations with the date of travel. (Col. 5, ll. 52-54.)
 5. A central reservation system uses the itinerary to list flight information and a special fair listing if available. (Col. 5, ll. 54-56.)
 6. The special fair listing indicates that an unspecified-time ticket can be purchased. (Col. 5, ll. 56-60.)
 7. If the unspecified time ticket is purchased, the central reservation system books the ticket. (Col. 6, ll. 2-3.)
 8. For each booked unspecified time ticket, a passenger name record number is created. (Col. 6, l. 4.)
 9. In one embodiment, customers receive a verification code, which is used to later retrieve actual flight information at the airport. (Col. 22, ll. 40-45.)
 10. The airline’s revenue management system obtains a list of actual flights that satisfies the parameters of the unspecified time ticket. (Col. 6, ll. 13-15.)

11. The revenue management system then places the customer on a flight. (Col. 6, ll. 19-21.)
12. Airline, departing airport and destination airport could also be an unspecified parameter for the ticket. (Col. 3, ll. 39-44.)
13. Hawaiian Air relates to the sale of coupon, essentially open tickets, to customers using ATMs. (Pg. 1.)
14. Customers will need to contact Hawaiian Air to reserve space on their desired flight. (Pg. 1.)

Any differences between the claimed subject matter and the prior art

15. Walker does not disclose a processor configured to present information to a customer of available flights based on the geographic and non-geographic flight parameters stored in a record, which includes at least one unspecified geographic flight parameter.

The level of skill in the art

16. Neither the Examiner nor the Appellant has addressed the level of ordinary skill in the pertinent art of airline flight sales. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error ‘where the prior art itself reflects an appropriate level and a need for testimony is not shown’”) (“[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error ‘where the prior art itself reflects an appropriate level and a need

for testimony is not shown'") (Quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

Secondary considerations

17. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

Claim Construction

During examination of a patent application, a pending claim is given the broadest reasonable construction consistent with the specification and should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004). “[W]e look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation. As this court has discussed, this methodology produces claims with only justifiable breadth. *In re Yamamoto*, 740 F.2d 1569, 1571 (Fed. Cir. 1984). Further, as applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee. Am. Acad., 367 F.3d at 1364.” *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007). Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003).

Obviousness

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains.”” *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [Graham] factors continue to define the inquiry that controls.”) The Court in *Graham* further noted that evidence of secondary considerations “might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” 383 U.S. at 17-18.

ANALYSIS

The Rejection of Claims 1-6, 14-16 and 76-78 under 35 U.S.C. §103.

The Appellant contends that all the limitations of claim 1 are not met because the combination of Walker and Hawaiian Air does not disclose the customer selecting the actual flight. According to the Appellant, the combination leads to the airline selecting the flight based on the booking information, not the customer. (App. Br. 5-6).

The Examiner relies on disclosure in Walker of the creation of a passenger name record (PNR) number or the obtaining of a verification code by a customer as a “suggest[ion] that actual flight information is presented and selected by the customer or agent via a network.” (Answer 4).

Claim 1 recites “present information to the customer, the information representative of flights available to be selected by the customer based on

the geographic and non-geographic flight parameters stored in the record.” (FF 2.) The record includes “at least one of the geographic flight parameters being unspecified.” (FF 1.)

In order to make a *prima facie* showing of obviousness, the Examiner must provide suggestion for all of the limitations of claim 1. Obviousness requires a suggestion of all the elements in a claim (*CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003)) and “a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). “The first issue we address with respect to obviousness is the scope and content of the prior art—specifically whether the prior art exhibited every step of the methods claimed in independent claims 1 and 31 of the ’099 patent.” *Miniauction, Inc. v. Thomson Corp.*, F.3d (Fed. Cir. 2008).

In Walker, the processor (i.e. central reservation system) is configured to present flight information to a customer. (FF 5.) However, the information is based on an itinerary provided by the customer or travel agent. The itinerary includes origin, destination and dates of travel (FF 4), but does not include an unspecified geographic parameter as required by claim 1.

Further, if the customer selects a special fare listing from the previously presented flight information, an unspecified time ticket for the special fare listing is booked. (FF 5-7.) The unspecified time ticket could include an unspecified geographic parameter. (FF 12.) However, the processor is not configured to again present information to the customer based on the parameters of the ticket. Instead, the airline’s revenue

management system uses the ticket parameters to assign the customer to an actual flight. (FF 10-11.)

After booking, a passenger name record is then created (FF 8), and the customer receives a verification code (FF 9).

We conclude that while Walker does describe a processor configured to present information and separately a record that includes an unspecified parameter, the processor is not configured to present information to the customer *based on the record including the unspecified geographic flight parameter.*

The Examiner also cites Hawaiian Air for the use of an identifier that is operable to book a flight by contacting the airline. (Answer 4.) While Hawaiian Air broadly describes the customer contacting the airline to book a flight using a pre-paid coupon. (FF 13-14.) The Examiner does not explain how combining Walker with Hawaiian Air results in a processor configured as recited in claim 1.

We conclude that the combination of Walker and Hawaiian Air does not suggest all the limitations of claim 1. A *prima facie* case of obviousness of claim 1 under 35 U.S.C. 130(a) as being unpatentable over Walker in view of Hawaiian Air has therefore not been established. Accordingly, we reverse the rejection of claim 1.

Claims 2-16 and 76-78 depend from claim 1, whose rejection we have reversed above. For the same reasons, we will also not sustain the rejections of claims 7-11 over the cited prior art. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) ("[D]ependent claims are nonobvious if the independent claims from which they depend are nonobvious.")

The Rejection of Claims 12 and 13 under 35 U.S.C. §103.

Notwithstanding that the Examiner rejected claims 12 and 13 over Walker in view of Oneda (instead on in view of Hawaiian Air) in the Final Rejection of Jul. 10, 2006, and the Appellant did not separately address the rejection of claims 12 and 13, these claims depend from claim 1 and therefore their rejection is reversed for the reasons discussed.

CONCLUSIONS OF LAW

We conclude that the Appellants have shown that the Examiner erred in rejecting claims 1-16 and 76-78 under 35 U.S.C. § 103 as unpatentable over Walker in view of Hawaiian Air.

DECISION

The decision of the Examiner to reject claims 1-16 and 76-78 is reversed.

REVERSED

Appeal 2008-4358
Application 09/409,242

LV:

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